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14 GOOGLE INC.

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16   UNITED STATES DISTRICT COURT

17   NORTHERN DISTRICT OF CALIFORNIA

18   SAN FRANCISCO DIVISION

19 ORACLE AMERICA, INC.,   Case No. 3:10-cv-03561-WHA

20   Plaintiff,   **DECLARATION OF REID P. MULLEN
                                          IN SUPPORT OF GOOGLE INC.'S
21   v.   MOTION FOR ADMINISTRATIVE
                                          RELIEF TO DEEM ISSUES
22 GOOGLE INC.,   UNDISPUTED**

23   Defendant.   Dept.:   Courtroom 8, 19th Floor
                                          Judge: Hon. William Alsup
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1   I, REID MULLEN, declare as follows:

2   1.   I am an associate in the law firm of Keker & Van Nest LLP, counsel to Google

3   Inc. ("Google") in the present case. I submit this declaration in support of Google's Motion for

4   Administrative Relief to Deem Issues Undisputed ("Motion"). I have knowledge of the facts set

5   forth herein, and if called to testify as a witness thereto could do so competently under oath.

6   2.   On April 3, 2012, I sent an email to counsel for Oracle America, Inc. ("Oracle")

7   proposing the following stipulations for purposes of this trial: (1) The Java programming

8   language is open and free for anyone to use. (2) The names of the Java language API files,

9   packages, classes, and methods are not protected by copyright law. (3) Aside from a nine-line

10 function that Oracle accuses Google of copying, Oracle does not contend that Android's source

11 code in any of the accused APIs was copied from the source code used in the Java platforms. A

12 true and correct copy of the above-referenced correspondence is attached as **Exhibit A**.

13   3.   On April 4, 2012, counsel for Oracle responded by email and either declined to

14 stipulate to these statements, or placed conditions on acceptance that were unacceptable to

15 Google. *See* Exhibit A.

16   4.   In light of the quickly approaching trial date, Google now moves to have these

17 issues deemed undisputed for the purposes of the trial.

18   I declare under penalty of perjury that the foregoing is true and correct and that this

19 declaration was executed at San Francisco, California on April 5, 2012.

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21   By: */s/ Reid Mullen*
22   REID MULLEN

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DECLARATION OF REID MULLEN
Case No. 3:10-cv-03561-WHA

646313

EXHIBIT A

Reid P. Mullen

From:	Muino, Daniel P. <DMuino@mofo.com>
Sent:	Wednesday, April 04, 2012 3:00 PM
To:	Reid P. Mullen; Oracle MoFo Service List; Oracle-Google@BSFLLP.com
Cc:	DALVIK-KVN-ATTY; dalvik-KS@KSLAW.com; GT_Google@gtlaw.com
Subject:	Oracle/Google: Google's proposed fact stipulations
Categories:	DMFiled

Reid,

We're responding to Google's proposed fact stipulations:

1. As reflected in the language you quote, Oracle isn't asserting claims in this case based on use of the Java programming language itself. We may be amenable to a stipulation to that effect. However, to avoid confusion, any such stipulation would need to be accompanied by a stipulation clarifying that the Java APIs and class libraries are distinct from the language, as Google acknowledged in its Answer and Counterclaims (Counterclaims, para. 3). We'd be happy to discuss this further.

2. This is really a proposed statement of law, rather than a factual stipulation. As the Court will ultimately need to resolve copyright law issues in connection with jury instructions, we don't think a fact stipulation on such issues is appropriate. Again, we are willing to discuss this further.

3. We do not agree that Google's copying of Oracle's source code into Android for the 37 accused Java APIs was limited to rangeCheck.

Daniel P. Muino
Morrison & Foerster LLP
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415.268.7475 | 415.268.7522 fax
dmuino@mofo.com | www.mofo.com

From: Reid P. Mullen [mailto:RMullen@kvn.com]
Sent: Tuesday, April 03, 2012 10:18 AM
To: Oracle MoFo Service List; Oracle-Google@BSFLLP.com
Cc: DALVIK-KVN-ATTY; dalvik-KS (dalvik-KS@KSLAW.com); GT_Google@gtlaw.com
Subject: Proposed fact stipulations

Dan – In advance of our meet and confer call today at 3:00 p.m., below are three fact stipulations proposed by Google.

1. **The Java programming language is open and free for anyone to use.**

    Authority: March 28, 2012 Hrg. Tr. at 81:6-9 ("[MR. JACOBS] "And, of course, just as anyone could write a new novel in the English language, even if the English language was an invented language and protectable, the Java language is free for application programmers, free for them to use."); *id.* at 67:23-25 ("[THE COURT] And along the way Oracle has dedicated to the public domain, as far as this case is concerned anyway, the use of the Java

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programming language."); February 9, 2011 Hrg. Tr. at 8:16-18 (" [MR. JACOBS] the Java programming language, we're not asserting that we own that programming language for purposes of this case"); July 21, 2011 Tr. at 50:18-20 ("THE COURT: But you admit that the Java programming language is open to anybody. MR. JACOBS: Yes."); September 15, 2011 Hrg. Tr. at 12:18-19 ("we are making no claim for the protect[a]b[i]lity under copyright of the Java programming language, in and of itself').

2. **The names of the Java language API files, packages, classes, and methods are not protected by copyright law.**

   Authority: September 15, 2011 MSJ Order [Dkt. 433] at 7:27-8:2 ("Google argues that 'the names of the Java language API files, packages, classes, and methods are not protectable as a matter of law' (Br. 17). This order agrees. Because names and other short phrases are not subject to copyright, the names of the various items appearing in the disputed API package specifications are not protected."); *id.* at 8:22-23 ("Having found that the names of the various items appearing in the disputed API package specifications are not protected by copyright on account of the words and short phrases doctrine . . . "); March 28, 2012 Hrg. Tr. at 68:1-2 ("[THE COURT] The Court has already ruled that the use of the names is not protectable. Like 'square root' is not protectable.").

3. **Aside from a nine-line function that Oracle accuses Google of copying, Oracle does not contend that Android's source code in any of the accused APIs was copied from the source code used in the Java platforms.**

   Authority: March 28, 2012 Hrg. Tr. at 4:16-5:1 ("[MR. JACOBS] Three of the 11 files are part of the Java APIs. Specifically, Google copied from java.util.Arrays.java into two Android files, rangeCheck. And Google copied from java.security.CodeSource.java the comments into the test file that Intel contributed to Harmony. . . . The other eight are in other parts of Android. They aren't in the libraries that implement the 37 APIs.")

   Id. at 11:12-20:

   THE COURT: Comments? Do you mean by that the specifications, or do you mean --
   MR. KWUN: No.
   THE COURT: -- the part of it that is so-called plain English to the user?
   MR. KWUN: It's in the source code file, but it's not actual source code. It's commentary --
   THE COURT: Not compiled.
   MR. KWUN: Right. So when you compile it, if you remove that text, it has no effect —
   THE COURT: Comments don't get compiled, do they?
   MR. KWUN: They don't.
   THE COURT: So it's just to help the writer of the source code follow what's being done by the source code.

   Id. at 23:23-24 ("[MR. JACOBS] So we're on comments now. And we have a common understanding of comments. I agree with the previous discussion.

   THE COURT: I'm just talking -- I'm only talking about the source code that gets compiled by the computer —
   MR. JACOBS: Yes.
   THE COURT: -- at this point. So you're saying it's yes and no.
   MR. JACOBS: Because there is some code that literally you can line up word for word in that code, in that source code, the noncomment source code, the compiled source code, you can line up those words with the corresponding words in what we're calling the specification.

Id. at 41:12-17, 68-3:

THE COURT: All right. So once you get past the declarations, is your source code different than the Java source code?
MR. KWUN: Yes.
THE COURT: Is that part agreed to?
MR. JACOBS: Yes, Your Honor.

*****

[THE COURT:] The code within the APIs used by Google is not the same code.

Reid P. Mullen
Attorney at Law

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